UNITED STATES GOVERNMENT BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 21

H.J.HEINZ COMPANY, LP

Employer

and

JORGE QUINONEZ, An Individual

Case 21-RD-2851

Petitioner

and

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 542, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS^{1[1]}

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

^{1[1]} The Union's name appears as it was amended at the hearing.

- 2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- 3. The labor organization involved claims to represent certain employees of the Employer.
- 4. No question affecting commerce exists concerning the representation of certain employees of the employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act, for the following reasons:

The Employer is engaged in the manufacture of frozen food products with a facility located in San Diego, California. The Union currently represents a unit^{2[2]} of the Employer's production, warehouse, maintenance and quality control employees. The sole issue in this matter is whether the decertification petition filed herein on June 12, 2008, should be dismissed due to the existence of a contract bar.

Positions of the Parties

The Employer and the Union maintain that there is a contract that serves as a bar to the holding of an election, and that the petition should be dismissed. The Employer and the Union agree that although the Employer has not signed the contract in ink, the facts illustrate that the Union and the Employer have

employees, temporary employees, guards and supervisors as defined in the Act.

^{2[2]} The Unit of employees represented by the Union consists of: All full-time and regular part-time production employees, warehouse employees, maintenance employees and quality control employees employed by the Employer at its facility located at 7878 Airway Road, San Diego, California. Excluding, all other employees, office clerical employees, confidential employees, research and development

effectively "signed" the contract by virtue of their e-mail exchanges sufficient to constitute a contract bar.

The Petitioner contends^{3[3]} that there is no contract bar and that an election should be directed.

Decision Summary

I have considered the evidence and the arguments presented by the parties.

As discussed below, I have concluded that the e-mail exchanges between the Employer and the Union constitute a signature sufficient to establish a contract bar. Accordingly, I shall dismiss the petition.

Facts

On about June 12, 2007, the Employer voluntarily recognized the Union as the collective-bargaining representative of the Unit employees. The parties began negotiating in August 2007 and their last bargaining session was on March 12,

During the course of the negotiations, both the Employer and the Union hand-signed tentative agreements on non-economic issues. The dates of the hand-written signatures by Lawrence Ruffner, on behalf of the Employer; and by Phillip Farias, on behalf of the Union, on the non-

^{3[3]} The Union was the only party that filed a post-hearing brief. The Employer's and the Petitioner's positions are as expressed at the hearing.

^{4[4]} Negotiating on behalf of the Union was Organizer/Business Agent Phillip Farias, Business Agent Jaime Vasquez,

International Representative for Food Processing Dean Modecker, and four Deli Mix employees-Martha Lopez, Elsa

Carillo, Dermont Davis and Thomas Mendes. Negotiating on behalf of the Employer was Director-Labor Relations

[&]amp; Human Resources Lawrence Ruffner, Human Resources Manager Jemima Alvarado, the operations manager and other individuals who attended off and on.

economic tentative agreements are dated from August 1, 2008, through March 16, 2008.

At their last meeting on March 12, 2008, the parties finally reached agreement on all the economic issues. The agreements on the economic issues were not reduced to a tentative written agreement. Instead, on March 20, 2008, the Employer reduced the agreement on economic issues into writing and attached it to an e-mail to Union Business Agent Phillip Farias. The subject byline of the e-mail is "summary of final proposals of March 12th."

The text of the e-mail from Employer Director Lawrence Ruffner to Union Agent Farias states:

"Sorry for the delay, but things were a bit hectic when I returned to the office last Friday and into this week after being out of the office for a full week prior due to my trips to New Jersey and then to San Diego. Attached are the final proposals made and agreed to late in the day on March 12. I can make each of them into a Tentative Agreement for us to sign if you believe it is necessary. Please advise."

Underneath the above-noted e-mail, Ruffner typed: "Larry" followed by the additional designations:

Lawrence C. Ruffner Director-Labor Relations & Human Resources Heinz North America Telephone: 412.237.5808

Fax: 412.442.3119 Email: larry.ruffner@us.hjheinz.com

Mr. Ruffner e-mailed Mr. Farias again on March 27, 2008, with the same typed signature as his March 20, 2008, e-mail. This e-mail has the same subject heading as the March 20, 2008 e-mail and next to the word attachments is:

"Delimex negotiations - Co Final Econ Proposals 3-12-08.doc." In the text of this e-mail Mr. Ruffner notes there was an error on the amount of the ratification bonus and that the attached document contains the correct amount.

Thereafter, the Union held a ratification meeting on April 21, 2008. Prior to the ratification meeting, the Union prepared two written agreements for presentation at the ratification vote: one on the non-economic issues, and one on the economic issues^{5[5]}. Approximately 132 employees attended the meeting, and they overwhelmingly voted to ratify both the economic and non-economic agreements. The Union then notified the Employer of the outcome via e-mail on April 22, 2008, and in a phone message left for Mr. Ruffner on the same date.

On May 8, 2008, Union Agent Farias sent the following e-mail to Employer Director Ruffner:

"Larry,

Here is the Tentative Agreement. Jaime and myself has (sic) proof read the agreement, please proof read it and see if we missed anything. If you (sic) looks good to you let me know and I'll mail you two copies and the Pension documents to sign.

Phil Farias."

Attached to the e-mail message from Farias to Ruffner was a copy of the ratified comprehensive contract which the Union had composed, containing the economic and non-economic agreements. The attachment was a scanned copy of

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^{5[5]} There is no dispute but that the Union's written versions of the agreements presented at the ratification meeting were based on the parties' exchanged e-mail communications noted above.

the comprehensive contract which had been signed in ink by the Union on April 25, 2008.

According to the Employer, it has not yet signed the comprehensive contract because the parties are working out language issues, including some items that were inadvertently omitted. The Record discloses that after the Employer makes its changes, it will send the contract back to the Union to review. Once the parties have agreed on any changes, the Employer and the Union will sign it.

Although a final draft of the comprehensive contract has not been signed in ink by the Employer, the Employer has operated as if a contract with the Union is in place. In this regard, the Employer has paid a ratification bonus to Unit employees pursuant to the contract and has implemented wage increases pursuant to the contract.

The Employer, pursuant to the terms of the parties' contract, has also installed a bulletin board for the Union at its San Diego, California facility and it has allowed Union representatives access to the facility.

Analysis

The contract bar doctrine exists for the purpose of affording contracting parties and the employees a reasonable period of stability in their relationship without interruption and at the same time granting the employees the opportunity, at reasonable times, to change or eliminate their bargaining representative, if they wish to do so. Accordingly, the burden of proving that a contract constitutes a bar

to a representation election is on the party asserting the doctrine. *Roosevelt Memorial Park*, 187 NLRB 517 (1970).

The seminal case establishing the Board's substantive and technical contract bar rules is *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). In that case, the Board held that only a written contract fully executed prior to the filing of a petition may serve as a bar. The agreement need not be embodied in a formal document. An informal document or a series of documents, such as a written proposal and acceptance, which nonetheless contain substantial terms and conditions of employment are sufficient. *Seton Medical Center*, 317 NLRB 87 (1995); *Georgia Purchasing, Inc.*, 230 NLRB 1174 (1977); *Appalachian Shale Co.*, supra.

The Board has not construed the signature requirement to be strictly written. In *Television Station WVTV*, 250 NLRB 198 (1980), the Board found that the initialing of documents constituted a sufficient signature for contract bar purposes. In another case, *Georgia Purchasing, Inc.*, supra, the Board found that the written offer and acceptance of a contract by telegrams between the parties was sufficient to bar a petition filed after the parties reached an agreement. The Board concluded that the written offer and acceptance by telegram, which incorporated the agreements reached by the parties, was sufficient to bar the petition.

I find that the rationale in *Georgia Purchasing, Inc.* is applicable here as well. Instead of an exchange of telegrams, the Employer and the Union

communicated using e-mail. Through their e-mail exchanges, the parties acknowledged agreement on the economic issues with the agreement attached to the e-mail. Like telegrams, the e-mails were in written form and identified the parties' negotiators by name.

The Union points out that the e-mail exchanges in March and May 2008 between the parties constitutes a signature under the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"). The E-Sign Act addresses the evolving nature of technology which renders an e-mail signature a valid signature. Indeed even the Board now permits the filing of many documents by e-mail pursuant to its E-filing program.

In this instance, the Employer and the Union have both signed, in ink, the non-economic tentative agreements. The parties then negotiated the economic issues and reduced their agreement on economic issues to writing. The Employer then e-mailed the agreement on economic issues to the Union, with the Employer's negotiator's name (Ruffner) in the body of the e-mail. The Union then utilized that attachment and created the written agreements on both the economic and non-economic issues, which were submitted to the Unit at the time that they ratified the contract. The Union then composed a written, comprehensive, ratified contract, signed it in ink on April 25, 2008, and attached it to the Union's May 8, 2008, e-mail from Farias to Ruffner. I find that these e-mail exchanges with the noted attachments, constitute a signed agreement between the parties.

On the basis of the foregoing, I find that a contract was signed by the Employer and the Union prior to the filing of the instant petition. Accordingly, the petition is barred by the Board's contract bar rules, and I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be hereby dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by

5:00 p.m., EDT, on July 22, 2008. The request may be filed through E-Gov on the Board's web site, www.nlrb.gov^{6[6]}, but may **not** be filed by facsimile.

DATED at Los Angeles, California this 8th day of July, 2008.

James F. Small Regional Director National Labor Relations Board Region 21

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^{6[6]}See "E-Gov" on the Board's website, www.nlrb.gov for e-filing guidance.